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Attorneys for Plaintiff, Well Made Mfg Corporation

UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF NEW YORK

-----X
WELL-MADE TOY M'FG. CORPORATION :
a corporation of the State of New York :
Plaintiff, : Civil Action No.:
v. :
DOLLAR TREE, INC. (d/b/a Deals, Inc. and :
Dollar Tree Stores, Inc.) :
a corporation of Virginia :
and :
GREENBRIER INTERNATIONAL, INC. :
a corporation of the State of Delaware :
Defendants :
-----X

COMPLAINT FOR COPYRIGHT INFRINGEMENT

Plaintiff for its Complaint against the Defendants respectfully alleges as follows:

THE PARTIES

1. The plaintiff, Well Made Toys M'fg Corporation (hereinafter "Well Made"), is a corporation of the State of New York having its principal place of business at 52-07 Flushing Avenue, 2nd Floor, Maspeth, NY 11378.

2. Upon information and belief, the defendant Dollar Tree, Inc. (d/b/a Deals, Inc and Dollar Tree Stores, Inc.) (hereinafter, collectively, "Dollar Tree") is a corporation of the Commonwealth of Virginia having its principal place of business at 500 Volvo Parkway, Chesapeake, VA 23320.

3. Upon information and belief, the defendant Greenbrier International, Inc. (hereinafter "Greenbrier") is a corporation of the State of Delaware, having a principal place of business at 500 Volvo Parkway, Chesapeake, VA 23320.

4. Plaintiff Well Made is informed and believes and on that basis alleges, that Defendants Dollar Tree and Greenbrier have transacted business in the State of New York by offering for sale and selling within this Judicial District by direct sales products infringing the rights of Well Made asserted herein.

JURISDICTION AND VENUE

5. The claims herein arise under the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*, and jurisdiction is conferred by virtue of 28 U.S.C. §§ 1331(a) and 1338(a). The claims herein also arise under the international copyright laws including the Universal Copyright Convention and The Berne Convention, and the copyright laws of Canada, including the Canadian Copyright Act (R.S.C. 5.).

6. Venue is founded upon 28 U.S.C. § 1391(b) and (c).

COUNT I: VIOLATION OF FEDERAL AND INTERNATIONAL COPYRIGHT LAW

7. Well Made hereby charges Dollar Tree and Greenbrier with copyright infringement in violation of The Copyright Act of 1976, the applicable international conventions including the Universal Copyright Convention and The Berne Convention, and the laws of Canada, including the Canadian Copyright Act (R.S.C., c. C-42).

8. Well Made is involved in the design and marketing of toys, including sculptural dolls. The designs created by or for Well Made are copyrighted under the laws of the United States, Canada, and under international law including the various copyright conventions and treaties the United States is a party to, as the Universal Copyright Convention and The Berne Convention.

9. The copyrighted designs of Well Made include the *Hug-N-Snuggle* doll, designed and created by Well Made. The *Hug-N-Snuggle* design is registered in the United States Copyright Office, United States Copyright Registration No. VAu651-638, for facial artwork and the soft body sculpture.

10. Attached hereto as Exhibit A is a true and correct copy of the Copyright Registration Certificate No. VAu651-638, and the application filed with the United States Copyright Office for the *Hug-N-Snuggle* doll created by Well Made.

11. The copyright for the *Hug-N-Snuggle* doll created by Well Made is in full force and effect; and Well Made has complied with all requirements in submitting the application, for copyright registration for the *Hug-N-Snuggle* doll, Exhibit A. Well Made has complied with all requirements for the protection its copyrighted designs in the United States and internationally.

12. The plaintiff Well Made is informed and believes, and therefore avers, that subsequent to the introduction, by Well Made into the market of the United States, of its *Hug-N-Snuggle* doll, the defendants Dollar Tree and Greenbrier have infringed upon the copyright of Well Made in its *Hug-N-Snuggle* doll by producing, or causing to be produced, importing into the United States as well as marketing therein sculpted dolls that have been copied directly from and are substantially similar in appearance to the copyrighted design of the *Hug-N-Snuggle* doll of Well Made.

13. The defendant, Dollar Tree, marketed within this judicial district at least one style of its *Baby Doll* having substantially similar sculptural artwork as the doll illustrated in Exhibit A, and are believed to have acquired such items from defendants Greenbrier.

14. Attached hereto as Exhibit B is a true and correct copy of a color image of the *Hug-N-Snuggle* doll created and marketed by Well Made, along side the comparable *Baby Doll* that, upon information and belief, is distributed by defendant Greenbrier, and further marketed and sold by defendant Dollar Tree.

15. The infringing *Baby Doll* shown in Exhibit B was sold and purchased at a Deals, Inc. store located in this judicial district; and said Deals Inc. store, upon information and belief, is operated and controlled by Dollar Tree, Inc.

16. Attached hereto as Exhibit C is a true and correct copy of the infringing *Baby Doll* of Dollar Tree offered for sale, within this judicial district, on its *deals.dollartree.com* website.

17. The *Baby Doll* marketed by the defendants, upon information and belief, has been copied directly from and is substantially similar to the copyrighted *Hug-N-Snuggle* doll marketed by plaintiff Well Made; and more particularly, the distinctive artwork of the sculptural features of the *Baby Doll* marketed by the defendants is essentially identical to the copyrighted *Hug-N-Snuggle* doll of Well Made.

18. As a result of such actions, as outlined in paragraphs 12-17 above, defendant Dollar Tree has directly infringed Well Made's copyrights.

19. As a result of such actions, as outlined in paragraphs 12-17 above, defendant Greenbrier has directly infringed and induced the infringement of others of Well Made's copyright, including retailers in this judicial district, who purchased the infringing Greenbrier products, and Greenbrier, upon information and belief, knew such retailers would be offering the infringing Greenbrier products for sale in this judicial district.

20. The plaintiff Well Made is informed and believes and, therefore avers that the aforesaid infringement and inducement thereof by the defendants of the copyrighted subject matter of Well Made was, and continues to be, with the knowledge that the sculpted designs of Well Made's products are copyrighted and that the defendants, in doing or authorizing such acts, have infringed the rights of Well Made under the copyright laws of the United States, Title 17 U.S.C. § 101 *et seq.*

19. The acts noted above of the defendants are unauthorized by Well Made or any of its agents, and such unlawful acts have enabled the defendants to trade unlawfully upon the creative efforts of the plaintiff Well Made. The defendants have, consequently, unjustly enriched themselves at the expense and to the damage and injury to the plaintiff Well Made.

20. Upon information and belief, unless enjoined by this court, the defendants will further impair if not destroy the value of the copyrights and the goodwill associated therewith that are owned by the plaintiff Well Made.

21. Upon information and belief, Well Made avers that as a result of the foregoing, Well Made risks substantial loss of revenues and has sustain irreparable damage as the result of the willful and wrongful conduct of the defendants.

COUNT II: INDUCEMENT TO INFRINGE COPYRIGHT

22. As a second and complete ground for relief, plaintiff Well Made hereby charges the defendant Greenbrier with inducement of others to infringe valid international copyrights of plaintiff Well Made and hereby realleges the allegation of paragraphs 1 through 21 as though fully set forth herein.

23. By the activities noted above, the defendant Greenbrier has induced others around the world to infringe the international copyrights of plaintiff Well Made set forth herein by inducing others to manufacture and/or market products having unauthorized

copies of the Well Made designs and, upon information and belief, such inducement was done willfully, knowingly, and maliciously.

24. As a result of the inducement by the defendant Greenbrier of others including manufacturers and retailers of products bearing the artwork infringing the copyrights of plaintiff Well Made as set forth herein, such others including manufacturers and retailers have profited wrongfully and to the injury of plaintiff Well Made.

WHEREFORE, Plaintiff prays:

A. That the defendants, Dollar Tree and Greenbrier, and their agents, servants, employees and attorneys as well as those persons in active concert or participation therewith be permanently enjoined and restrained from manufacturing, having manufactured, importing, offering for sale, selling, advertising or promoting or distributing in the United States any products incorporating the copyrighted subject matter or distinctive elements of the sculpted dolls of Well Made; and

B. further, that the defendants Dollar Tree and Greenbrier, be ordered:

(i) to deliver up for destruction all of the merchandise in their possession or control which incorporates any of the copyrighted designs of products marketed by Well Made, as well as all means for producing, advertising or promoting such infringing merchandise;

(ii) to make diligent efforts to recall all of the materials set forth in paragraph (B)(i) already distributed; and

(iii) to file with this court and serve on plaintiff ten (10) days after the date of the injunction a report in writing and under oath setting forth in detail the matter or form in which the Defendants Dollar Tree and Greenbrier have complied fully with the injunction;

C. that an accounting and judgment be rendered jointly and severally against the defendants Dollar Tree and Greenbrier for:

(i) all profits received by the defendants from the sale of products infringing the copyrights asserted in this matter as provided by 17 U.S.C. § 504(b) and applicable international law;

(ii) all damages sustained by Well Made as a result of the copyright infringement of the defendants including compensation to Well Made fully for all sales of products of Well Made that have been diverted or reduced as a result of the infringement by the defendants as provided by 17 U.S.C. § 504(b) and international law;

(iii) in the event Well Made so elects, statutory damages in the amount of \$150,000 as authorized by 17 U.S.C. § 504(c)(2) against the defendants for each copyright infringed and for each style of product infringing such copyright;

D. against defendants Greenbrier, an accounting and judgment be rendered for:

(i) all profits received by the customers of defendants for the induced infringement from the resale of products infringing the copyrights asserted in this matter as provided by 17 U.S.C. § 504(b) and international law;

(ii) all profits received by the manufacturer of defendants for the induced infringement from the manufacture of products infringing the copyrights asserted in this matter as provided by 17 U.S.C. § 504(b) and international law;

(iii) in the event Well Made so elects, statutory damages in the

amount of \$150,000 as authorized by 17 U.S.C. § 504(c)(2) against defendant for the infringement induced for each of its customers;

E. that Well Made have and receive its costs in this action, including an award of its reasonable attorney's fees with interest from the date of the filing of this complaint pursuant to 17 U.S.C. § 505;

F. that Well Made receive interest on its damages awards from the date of injury;

G. punitive damages for the willful and wonton infringement of defendant; and

H. that the plaintiff be granted such other and further relief as the court deems just and appropriate.

Dated: New York, New York
September 2, 2014

Respectfully submitted,

/s/ Joseph A. Dunne
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jerry.dunne@dunnelaw.net
Attorneys for Plaintiff, Well Made Mfg Corporation

EXHIBIT A

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Register of Copyrights, United States of America

Short Form VA

For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

R

VAu 651-638



Effective Date of Registration

DEC 30 2004

Application Received

DEC 30 2004

Deposit Received

One DEC 30 2004 Two

Fee Received

Examined By
SDW
Correspondence

TYPE OR PRINT IN BLACK INK DO NOT WRITE ABOVE THIS LINE

Title of This Work		1	"HUG-N-SNUGGLE"	FACIAL ARTWORK & SOFT BODY SCULPTURE			
Alternative title or title of larger work in which this work was published							
Name and Address of Author and Owner of the Copyright		2	WELL-MADE TOY MFG CORP 184-10 EAST JAMAICA AVE 4th FLOOR HOLLIS, NEW YORK 11423				
Nationality or domicile Phone fax and email		Phone (718) 454-1326		Fax (718-) 454-7862 Email susancook@wellmadetoy.com			
Year of Creation		3	2004				
If work has been published, Date and Nation of Publication		4	a Date	Month	Day	Year (Month day and year all required)	
			b Nation				
Type of Authorship in This Work Check all that this author created		5	<input checked="" type="checkbox"/> 3-Dimensional sculpture <input type="checkbox"/> 2-Dimensional artwork <input checked="" type="checkbox"/> Technical drawing		<input type="checkbox"/> Photograph <input type="checkbox"/> Jewelry design <input type="checkbox"/> Map <input type="checkbox"/> Text		
Signature		6	I certify that the statements made by me in this application are correct to the best of my knowledge Check one				
Registration cannot be completed without a signature			<input type="checkbox"/> Author <input type="checkbox"/> Authorized agent <input checked="" type="checkbox"/> Susan Cook				
Name and Address of Person to Contact for Rights and Permissions Phone fax and email		7	<input checked="" type="checkbox"/> Check here if same as #2 above		Phone () Email		

OPTIONAL

8

Name ▼ MS SUSAN COOK
WELL-MADE TOY MFG CORP
Number/Street/Apt ▼
184-10 EAST JAMAICA AVENUE, 4th FLOOR
City/State/ZIP ▼
HOLLIS, NEW YORK 11423

Complete this space only
if you currently hold a
Deposit Account in
the Copyright
Office

9

Deposit Account # _____

Name _____

DO NOT WRITE HERE

Page 1 of _____ pages

17 U.S.C. § 506(e). Any person who knowingly makes a false representation of a material fact in the application for copyright registration provided for by section 409, or in any written statement filed in connection with the application, shall be fined not more than \$2,500.

Short Form VA

For a Work of the Visual Arts
UNITED STATES COPYRIGHT OFFICE

Registration Number

VA VAU

Effective Date of Registration

Application Received

Examined By

Deposit Received

One

Two

Fee Received

Correspondence

TYPE OR PRINT IN BLACK INK. DO NOT WRITE ABOVE THIS LINE.

Title of This Work:

"HUG-N-SNUGGLE"

FACIAL ARTWORK & SOFT BODY SCULPTURE

Alternative title or title of larger work in which this work was published:

Name and Address of Author and Owner of the Copyright:

WELL-MADE TOY MFG. CORP.
184-10 EAST JAMAICA AVE. 4th FLOOR
HOLLIS, NEW YORK 11423

Nationality or domicile: Phone, fax, and email:

Phone (718) 454-1326 Fax (718-) 454-7862
Email susancook@wellmadetoy.com

Year of Creation:

2004

If work has been published, Date and Nation of Publication:

a. Date _____ Month _____ Day _____ Year _____ (Month, day, and year all required)

b. Nation _____

Type of Authorship in This Work:

Check all that this author created.

 3-Dimensional sculpture
 2-Dimensional artwork
 Technical drawing Photograph
 Jewelry design Map
 Text

Signature:

I certify that the statements made by me in this application are correct to the best of my knowledge.* Check one:
 Author Authorized agent

X _____

Registration cannot be completed without a signature.

Name and Address of Person to Contact for Rights and Permissions: Phone, fax, and email:

 Check here if same as #2 above.

Phone () Fax ()

Email _____

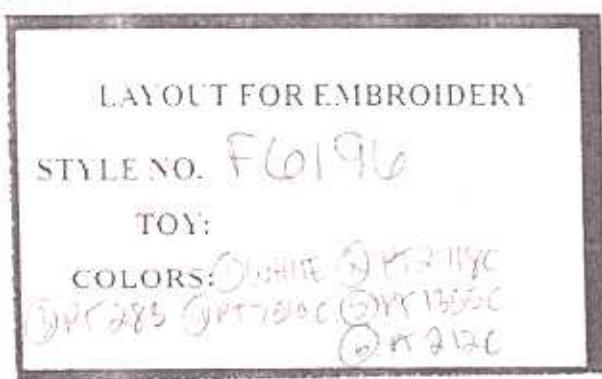
Name ▼ MS. SUSAN COOK
WELL-MADE TOY MFG. CORP.Number/Street/Apt ▼
184-10 EAST JAMAICA AVENUE, 4th FLOORCity/State/ZIP ▼
HOLLIS, NEW YORK 11423

Certificate will be mailed in window envelope to this address:

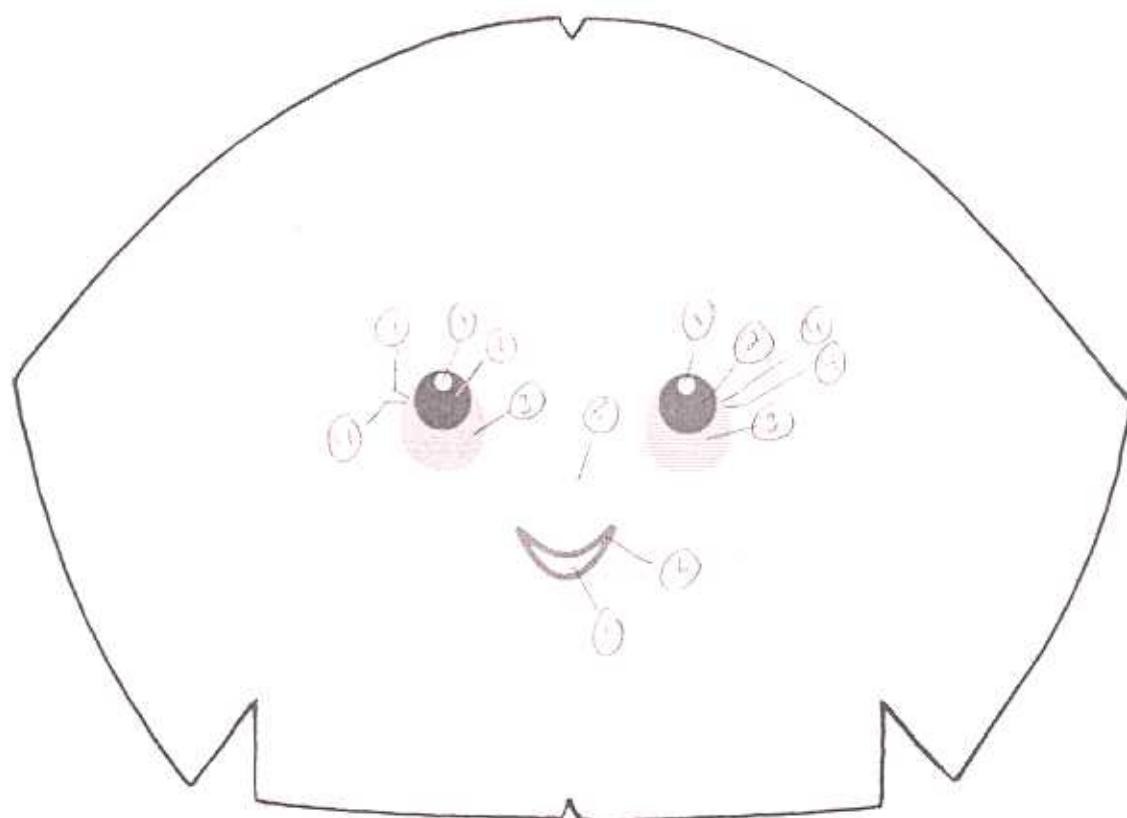
Complete this space only
If you currently hold a
Deposit Account in
the Copyright
Office.

Deposit Account # _____

Name _____



Revised 10/21/04





F6196

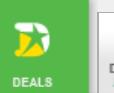
EXHIBIT B

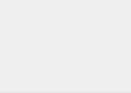
Well-Made Toy
(blue)

Greenbrier Int'l
(pink)



EXHIBIT C

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Deals
A Dollar Tree® Company

Search by Keyword or item # [go](#)

Order by Phone 24/7: 1-877-530-8733

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Plush Baby Dolls, 12"

SKU#: 175942

[Product Details](#)

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Unit Price: \$5.00 (Minimum qty: 12 units)

Case Price: \$60.00 (12 units per case)

Your ZIP Code [? Why do we need this?](#)

Number of Cases (12 units per case) [Best value!](#)

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Available Delivery Options [\(Learn More\) ▾](#)

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- UPS Shipping

Please enter your ZIP code to check availability.





Product Details

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Lovely dolls are cuddly and soft and great for snuggling! 10" soft fabric rag dolls are wearing pink pajamas and a pink sleeping cap. The perfect gift for any little girl. Case includes 12 – 12" plush baby dolls.

 [Case Comes Assorted](#) (more info)

customers also bought:



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[Plush African-American Rag Dolls, 15"](#)



[Plush Rag Dolls, 15"](#)



[Royal Norfolk 16-Piece White Stoneware Dinnerware Sets](#)

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trusted brand names

We stock your favorites!








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about deals

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You want a great deal, and we deliver it by offering low prices on everyday essentials, party, seasonal, and home products that make it easy for you to manage the family budget without sacrificing the fun side of life. No matter what you need, you'll find it at Deals.



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